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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/658,298
Filing Date: September 08, 2000
Appellant(s): SIMONE, KENNETH D.

Kurt M. Pankratz (46,977)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 14, 2006 appealing from the Office action mailed May 23, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal except from those set forth by appellant.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

However, arguments regarding arguments with respect to claim 1 rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter filed with the above-mentioned Appeal Brief have been fully considered and are persuasive. The rejection

of claim 1 is rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter is hereby withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following evidence/references are relied upon by the examiner in the rejection of the claims under appeal.

US 6,628,824 Belanger Sep. 30, 2003 US 5,907,837 Ferrel et. al. May 25, 1999

Hollingsworth, D., Workflow Management Coalition, The Workflow Reference Model, Workflow Management Coalition, Jan. 1995, p. 1-55.

(9) Grounds of Rejection

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-10, 12 and 14 are rejected under 35 USC 103(a) as being unpatentable over Hollingsworth in view of Ferrel in further view of Belanger (US 6,628,824)

Regarding claim 1, Hollingsworth teaches:

providing a set of predetermined process definitions (see sections 2.1-2.1.1, pages 6-8) including different process activity steps within the process (page 14),

one process definition defining a process for processing data (section 2.1.3 on page 8, sub-processes suited to specific data type see page 19) including image data (section 2.2.1 on page 10);

storing a project definition as executable instances each corresponding to a function definition in the set, executable by workflow engines to perform functions according to the definitions, i.e. workflow logic execution or run-time (section 2.1.1 on page 6, process definition on page 12, project definition see section 2.2.5); the process definition further includes;

a plurality of function components, entities, tasks, activities "portions" which each correspond to one of said function definitions in said set of predetermined function definitions (components that handle/support operations or functions see page 12),

each function definition define interfaces (e.g. one input/output ports) that are functionally related (e.g. output supplies to an input) (Fig. 2 on page 9) according to the corresponding function definition (distribution of information supported by interfaces or points which use communication mechanism for passing messages between application components see section 2.1.4 on page 8-9, see interfaces definitions on page 9, see import/export interface (i.e. input/output port) section 3.4.2 on pages 28-29);

a "source" component, defining a "data source" and defining an output interface "port" through which said data from the data source can be produced (file store or master source page 17, accessing an object store using a defined an object name and access path via API to internetworking see p. 26-27, API are points of interchange between the workflow components see p. 20-21, see import/export interfaces section 3.4.2 on p. 28);

a "destination" component defining a "destination data" and an input interface "port" through which data from the data source is received (data is distributed across individual components from a source see page 17, see definition interchange wherein a generated output

"source portion" of one component is used as on input in another "destination portion", see page 29, Fig. 9);

"binding information" which includes connection between an input and output interface "port" through which data flows between the associated modules or components (data flow between components or products via communication mechanisms section 2.1.3, interfaces role definition see p. 15 data interchange format definition between identified components is defined for each input/output interface Fig. 6, p. 20, language bindings supporting interfaces see p.46)

executing said project definitions (workflow logic) by an engine (see p. 6) or executed by a workflow enactment software (p. 12, see section 3.3.2 p. 22); and

transmitting a communication through a communication mechanism (section 2.1.4), transmitting after processing data during execution of said project definition (Fig. 2 sequential execution of activity steps, interfaces supporting data transmission between the steps p. 9, sequential processing supported by data exchange p. 49); although Hollingsworth teaches the processing of image data in an image processing project definition and object operations including retrieval and setting of object attributes, including processing data between the source and destination component discussed above, it does not explicitly teach adapting, the modifying, assembling image data;

Ferrel teaches "process definition", including a multimedia publishing business system providing a set of predetermined different function definitions (Fig. 1) for providing dynamic online content, said system comprising function components including a function (194) for editing image (Fig. 2, col 10/lines 34-49);

editing said image data during the execution of said function defined for editing said image (col 21/lines 54-61);

automatically transmitting content "a communication" to a remote device (120) through a communication link (e.g. accessible on-line) (col 9/lines 59-67), including create and transmit to a "remote" device created/edited content (e.g. 120 including a storage device 122) (col 10/lines 16-30), creating process includes image editing (col 10/lines 34-54) after creation published to a distribution point (col 8/lines 61-63, after creation released and stored a publication storage 120, col 9/lines 53-58);

It would have been obvious to one ordinary skilled in the art at the time the invention was made given the suggestion of Hollingsworth of the applicability of his teachings to image processing applicable in other information technology application, the teachings of Ferrel for information distribution including image processing would be readily apparent. One would be motivated to apply the secondary reference's teachings because in doing so, multiple users via the work-list/work-item supported by the plurality of communication protocols taught by Hollingsworth, may have content available for retrieval image data in one of several formats including image data and document data or a combination thereof, wherein the common source library database may store any type of data which can be repeatedly used, as suggested by Ferrel.

Although the applied references teach transmitting a communication after edit said image data, they do not explicitly teach where the condition includes a predetermined number of images.

Belanger teachings in the field of endeavor of automated processing of data, teaching a notification feature including transmitting a communication (col 9/lines 32-42), including transmitting a communication, e.g. a notifying after processing a predetermine number of images data (col 9/lines 22-64).

It would have been obvious to one ordinary skilled in the art at the time the invention was made given the teachings of given the suggestions of Hollingsworth for associating image systems with computerized facilitation or automation of business process and IT applications, the teachings of Belanger for information technology particularly images would be readily apparent. One would be motivate to given Hollingsworth means for identifying the state of individual process or activity via specific commands, e.g. query process status for the number of images processed as a percentage from the total number of images on the site or electronic network pending to be processed or the total of predetermined number of image data. One would be motivated to applied Belanger teaches in Ferrel's system enabling the detection of copied images for enforcing owner's copyrights in Ferrel's publishing environment providing information retrieval services, as suggested by Belanger.

Regarding claim 2, transmitting as executing is completed (Hollingsworth: Fig. 2, p. 9)

Regarding claim 3, formatting include formatting an email (Hollingsworth: section 2.2.3, 2.1.4, data conversion see p. 25, email conversion between modules see p. 26, X.400 communication protocol, i.e. documents the format at the OSI application layer for e-mail messages over various networks transports see section 4.2, Fig. 20 on p. 47)

Regarding claim 4, communication link includes a network (Hollingsworth: section 2.1.4, data transfer between modules is networked)

Regarding claim 5, Internet (Hollingsworth: Internet based management p. 53)

Regarding claim 6, sending communication (Hollingsworth Fig. 2, p. 9)

Regarding claims 7 and 8-10 these claims comprises the computer-readable medium with a computer program, which performs the method of claims 1, and 2, 3, 6, respectively, same rationale of rejection is applicable.

Regarding claim 12, transmitting after processing activity or step (Hollingsworth: Fig. 2, p. 9), processing activity including image editing (Ferrel: transmitting by a publisher a communication, after editing of image to a publication storage col 9/lines 18-25, 52-58); and communication identifies an occurrence of a predetermined condition to initiate a subsequent process (Hollingsworth: Fig. 2, p. 9).

Regarding claim 14, this claim comprises the computer-readable medium with a computer executable program, which performs the method of claim 12, same rationale of rejection is applicable.

(10) Response to Arguments

A. Regarding claims 1-10, 12 and 14, it is argued (arguments section I (A) (1) of brief on p. 2) that Hollingsworth, Ferrel and Belanger fail to teach or suggest "providing a set of predetermined function definitions which are different, at least one of said predetermined function definitions defining a function for editing image data".

Because according to appellant with respect to claim 1: (i) the process definition in the Hollingsworth reference the process definition is not predetermined (p 13 of remarks) because in the reference, the computerized process includes manual definition and workflow definition; where a business process is translated into a computer processable definition, thus it is not *predetermined.*

In response to the above-mentioned argument, Appellants interpretation of the applied reference has been fully considered. The term claimed "predetermined function definitions" has been considered in light of the specifications (MPEP §2111/2106). The specifications have been reviewed for an explicit definition set forth in the written description and drawings that will control the interpretation of the term as it is in the claim, given inventor's lexicography entitlement and may Appellant rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning. See In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) and Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996) (MPEP § 2111.01).

In this case, it remains unclear where the claimed term "predetermined function definition", per se, can be found in the specification and/or drawings of instant invention. However, "project definition" has been found, although it also remains unclear where in the specification and/or drawings of instant invention at least the term "predetermined project definition" can be found. Thus, the closest term described in the specification and/or drawings of instant application, "project definition" is described as "a project definition 14 that defines how data from the files in the subdirectory 12 should be processed, and two computer subdirectories 16 and 17 that serve as data destinations into which files containing the processed data will be stored. The project definition 14 is executed by a computer, in a manner described in

more detail later, and successively obtains the files from the subdirectory 12, processes each file 12 in a manner described below, and then deposits the processed file in either the subdirectory 16 or the subdirectory 17 (page 8, lines 6-15). Project definition may be viewed as modules that carry out respective functions as soon as the data to carry out that function arrives at the input of respective module (page 10, lines 18-22).

Thus, the claimed term "predetermined function definition(s)" lacking an explicit definition that will control the interpretation of this term as it is in the claim(s) has been applied the broadest reasonable interpretation in light of the specification and/or drawings. Specifically, the term has been interpreted as instruction(s) or a process, task or activity definition or specification (e.g. stored as a file or program or set of instructions) for performing a function.

Hollingsworth teaches a that the process definition at runtime is interpreted by software which is responsible for creating and controlling operational instances of the process, scheduling the various activities steps within the process (p. 8), where the process definition comprises discrete activity steps, with associated computer and/**or** human operations and rules governing the progression of the process through the various activity steps (p. 8). Thus, the executable steps comprising a process. The process definition reads on claimed "function definition".

Regarding Appellants arguments that the reference applied teaches a process definition but the process definition of the reference is not "predetermined" (i.e. determined/defined beforehand). Because the process definition seems to be computer executable thus defined process definition interpreted at runtime is predetermined.

B. Regarding claims 1-10, 12 and 14, it is argued (arguments section I (A) (2) of brief on p. 2) that Hollingsworth, Ferrel and Belanger fail to teach or suggest "wherein transmitting said communication occurs after editing a predetermined number of images".

Because according to Appellant with respect to *claim 1*, Hollingsworth mere states that "workflow has been closely associated with image systems have workflow capability..." and the Ferrel reference's "image editor that can be used to create and modify sound, image, video, animation and other content object" does not teach defining a *function* for editing image data.

In response to the above-mentioned argument, Appellant's interpretation of the applied reference(s) has been fully considered. The claimed term "predetermined function definition(s)"

lacking an explicit definition that will control the interpretation of this term as it is in the claim(s) has been applied the broadest reasonable interpretation in light of the specification and/or drawings. Specifically, the term has been interpreted as instruction(s) or a *process, task or activity* definition or specification (e.g. stored as a file or program or set of instructions) for performing a function.

Ferrel teaches a function (process, task or activity) for editing image data. Particularly, sending a communication after editing images, wherein transmitting said communication occurs after editing a predetermined number of images.

Ferrel teaches editing (i.e. create, add, delete or modify) content including image at a publisher station (102) (column 10/lines 34-49),

> C. *System Components* Referring now to FIG. 2, the preferred basic *components* of the MP system 100 will now be described. The system 100 includes a *set of tools* for designing, developing and viewing multimedia on-line applications. A publisher, such as the publisher 102, utilizes a publisher workstation (also known as a computer or machine) 180 and a *Designer software environment 194* to *create* and publish the title layouts 110 and content 112. In the system 100, a publisher could possibly just *create* content and use the title layouts of another publisher. The title layouts and/or content are preferably stored in a network 122 that includes a high-performance server for hosting on-line applications. The preferred network 122 will be further described in conjunction with FIG. 3. A customer, such as customer 162, utilizes a customer workstation 182 and a runtime Viewer software component 202 to find and activate MPS titles, stored on the network 122, on a visual display at the workstation 182 (see column 10, lines 16-33).
> The Designer component (194 of Figure 2) is an extensible design and development environment that includes several preferred *software components.* These include a project editor 184 to manage tiles, containers, and objects; a page editor 186 to *create* and layout pages; a style sheet editor 187 to edit style sheets; a search object editor 189 to *create* search objects; a word processor, such as a MPS Document Editor 188, for *creating content* optimized for the MP system 100; and optional third-party tools, such as a sound editor 190, an *image editor 192*, and another media object editor 193 to *create and modify* sound, *image, video*, animation and other *content objects.* Together, these *programs* form the Designer Component 194. (see column 10, lines 34-49). FIG. 2, illustrates preferred basic components of the MP system 100 including a *set of tools for designing, developing* and viewing *multimedia on-line applications including d*esigner software environment 194 to create and publish the title layouts 110 and content 112.

Thus, Ferrel teaches a function (i.e. process, task or activity) for editing (e.g. creating/modifying) image data. Ferrel teaches storing a function definition which includes a plurality of functions portions (process, task or activity components) which each correspond to one of said function definitions in said set (Fig. 2), at least one of said function definitions defining a function for creating/modifying (editing) image data.

C. Regarding claims 1-10, 12 and 14, it is argued (arguments section I (A) (2) of brief on p. 2) that Hollingsworth, Ferrel and Belanger fail to teach or suggest "wherein transmitting said communication occurs after editing a predetermined number of images".

Because according to Appellant regarding claim 1, the Belanger reference fails to teach "wherein transmitting said communication occurs after editing a predetermined number of images", and does not even edit or change image data.

In response to the above-mentioned argument, Appellant's interpretation of the applied reference(s) has been reviewed.

Ferrel teaches sending a communication after editing images. Specifically, a communication (e.g. the image content) is transmitted (i.e. published) to a remote device (e.g. a server 246) over network (240 of Fig. 3) (column 17, lines 18-35), which sends a another communication (e.g. published content) to a remote device (e.g. server 398) (column 17/lines 36-44).

> When the publisher has *created* the title (with its page layouts) and *the content objects*, the title and *content are published together to the public distribution point* for downloading by consumers (see column 8, lines 61-67). Returning to the *creation* of title layouts and *content* by the publisher, *after creation*, the title layouts 110, 116 and content 112, 114, 118 *are released and stored in a publication storage 120 (see column 9, lines 52-58).* When the publisher *completes* the title, the title layout and *the content are published* to an MPS Caching Object Store (COS) server, such as MPS server 246 or alternatively just publish a content folder having one or more content objects *to* the COS *server 246, where server 246 copies these published content to system 398 (column 17, lines 29-44)*

Thus, Ferrel teaches transmitting said communication occurs after editing image data. However, Ferrel does not explicit determine a predetermine number of images.

Belanger teaches a notification communication feature, for sending a communication (e.g. message) to notifying an operator/addressee of a particular site that an event associated with an image has occurred (column 9, lines 32-42); the communication can be configured to be sent upon the occurrence of particular events including such as for example when an identified number of images of matching images have been found (see column 9, lines 32-51).

> In one embodiment, the spider or search engine is provided with an alarm or notification feature. Such features can include notifying an operator that an image match has occurred, notifying another party that an image match has occurred, and notifying the addressee of a particular site that an image(s) on that site matches an image(s) on another site. An alarm or notification can be visually displayed by using, for example, a text message, flashing display, color display, different font type or size, shading, borders, graying out, highlighting, animation, audio display, sound alarm, audibly broadcast message, and printed notice (see column 9, lines 32-42). An alarm or notification can be stored for later retrieval, configured to display at particular times, or conditioned upon the occurrence of particular events. For example, the notification can be triggered to display every ten minutes, every time an image match is found, every time ten image matches are found, when no image match is found, to identify the total number of images on a site or electronic network, and to identify the total number or percentage of matching images or sites having matching images (see column 9, lines 43-51). A search for duplicate images can be performed at the direction of user, or can be performed automatically. For example, the user can have a particular image identified and compared to an authenticated image to determine of the images are identical. Alternatively, the search engine or spider can be configured to search for and to determine the selected characteristics of an image or group of images. The spider or search engine can be programmed to locate all images at a particular site, locate images and identify only specific images, locate and identify all images at a particular site, compare located images with a predetermined identified

> image, and compare located images with each other to identify sites containing identical images (see column 9, lines 53-64)

Thus, Belanger teaches a program configured to transmit a communication when a predetermined number of images on a site or electronic network have been identified. Regarding Appellant's argument that Belanger fails to teach editing or changing image data. It is respectfully noted Ferrel teaches transmitting a communication after editing image data, as discussed above.

D. Regarding claims 1-10, 12 and 14, it is argued (arguments section I (B) of brief on p. 2) that Hollingsworth, Ferrel and Belanger combination is improper because there is no teachings, suggestion, or motivation to combine or modify the teachings of the references.

Because according to Appellant, nothing in Hollingsworth, Ferrel or Belanger suggest or motivates the proposed combination having disparate fields of endeavor, where Hollingsworth addresses workflow management technology involving the combinations of human and machine-based activities; Ferrel deals with an information retrieval server that indexes, searches and retrieves online content and stories; and Belanger deals with methods for analyzing, identifying, and comparing identified images.

In response to the above-mentioned argument, Appellant's interpretation of the applied references has been considered. Hollingsworth does not require specifically, human based activities by the definition set forth for "process definition". Particularly,

> A process definition normally comprises a number of discrete activity steps, with associated computer and/**or** human operations and rules governing the progression of the process through the various activity steps (see Hollingsworth p. 8). Work Flow is defined as Workflow is concerned with the automation of procedures where documents, information or tasks are passed between participants according to a defined set of rules to achieve, or contribute to, an overall business goal, whilst workflow may be manually organized, in practice most workflow is normally organized within the context of an IT system to provide computerized support for the procedural automation (see Hollingsworth p. 8). The process definition, in conjunction with any (run-time) workflow relevant data is used to control the navigation through the various activity steps within the process, providing information about the entry and exit criteria for individual activity steps, parallel or sequential execution options for different activities, user tasks or IT applications associated with each activity, etc. (Hollingsworth p. 14).

Regarding disparate fields of endeavor, it is respectfully noted that: Field of the Invention: The present invention relates to information retrieval systems and more particularly, to a system and method for indexing, querying and retrieving information in an on-line network (see Ferrel column 1, lines 10-15). Field of the Invention: the present invention relates generally

to image identification and, more specifically, to a computer-implemented method for analyzing, identifying, and comparing images (see Belanger column 1, lines 8-11). In according the invention's disclosure, the technical field of the invention relates in general to automated processing of multiple items of data and, more particularly, to a method and apparatus for automatically transmitting a communication during such automated data processing (see specification p. 1).

Thus, because the technical field of instant invention generally relates to automated processing of multiple items of data, the Hollingsworth, Ferrel and Belanger fall within that broadly stated technical field of endeavor of instant application.

Regarding the motivation to combine the Hollingsworth, Ferrel and Belanger references as not being based on "objective evidence of record" or at least no portions in the references have been cited.

Hollingsworth teaches that workflow has been closely associated with image systems and many image systems have workflow capability either built-in or supplied in conjunction with a specific workflow product. Many business procedures involve interaction with paper-based information, which may need to be captured as image data as part of an automation process (see Hollingsworth section 2.2.1 on p. 10 and also discussed by Appellant p. 13-14 of Brief).

Belanger teaches communication (alarm or notification) conditioned upon the occurrence upon the occurrence of particular events to be performed automatically, e.g. identify the total number of images on a site or electronic network, and to identify the total number or percentage of matching images or sites having matching images or determine the selected characteristics of an image or group of images or identify all images at a particular site (see Belanger column 9, lines 32-64); electronic representations (e.g. as digital images) are extremely easy to duplicate and transferred over the Internet, duplicate images can be difficult or impossible to determine, this is a problem for artists, copyright owners, and others who have interests in particular images (see Belanger column 1, lines 22-29). Belanger suggest that identification of image copies can be performed using methods including but not limited to one or more software applications (column 7, lines 46-51), where the identification information can be used to catalog, index, retrieve, identify, and register an image or images, where the images searched are not limited to

reproductions, screen captures, and modified (i.e. cropped areas) stored in a computer-accessible database (column 7, lines 62-column 8, line 3).

Ferrel teaches a set of tools for designing, developing and viewing multimedia on-line applications; an extensible design and development environment that includes several preferred software components that further include an image editor 192, and another media object editor 193 to create and modify image, video, animation and other content objects, where these programs form the designer Component 194 (column 10/lines 16-49).

E. Regarding claims 1-10, 12 and 14, it is argued (arguments section I (C) of brief on p. 2) that Ferrel is non-analogous art and cannot be properly combined.

Because according to Appellant the Ferrel reference is not within the invention's field of endeavor, namely, *online publication methods*.

In response to the above-mentioned argument, Appellant's interpretation of the applied references has been considered. However, according to the invention's disclosure, the technical field of the invention relates in *general to automated processing of multiple items of data* and, more particularly, to a method and apparatus for automatically transmitting a communication during such automated data processing (see specs p. 1). Field of the Invention of the Ferrel reference relates to information retrieval systems and more particularly, to a system and method for indexing, querying and retrieving information in an on-line network (see Ferrel column 1, lines 10-15). The system components, the preferred basic components of the MP system 100 includes a set of tools for *designing, developing* and viewing *multimedia on-line application*, where a publisher 102, utilizes a publisher workstation 180 and a designer software environment 194 to create and publish the title layouts 110 and content 112 including an extensible design and development environment (194) that includes several preferred *software components* to manage tiles, containers, and objects; and *optional third-party tools* to create and modify image, video, animation and other content objects (see Ferrel column 10, lines 16-49).

Thus, because the technical field of instant invention generally relates to automated processing of multiple items of data, the Ferrel reference falls within that broadly stated technical field of endeavor of instant application.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

BEATRIZ PRIETO
PRIMARY EXAMINER

/bp
October 21, 2006

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